

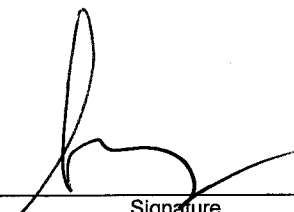
Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 249768044US1	
	Application Number 09/848,608-Conf. #5996	Filed May 3, 2001	
	First Named Inventor Gregov et al.		
	Art Unit 3625	Examiner N. U. Haq	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,376</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> <p> _____ Signature</p> <p>_____ Steven D. Lawrenz Typed or printed name</p> <p>_____ (206) 359-8000 Telephone number</p> <p>_____ 11/9/07 Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

Docket No.: 249768044US1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Gregov et al.

Application No.: 09/848,608

Confirmation No.: 5996

Filed: May 3, 2001

Art Unit: 3625

For: PERSONALIZED PROMOTION OF NEW
CONTENT

Examiner: N. U. Haq

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant is filing a Notice of Appeal and a Pre-Appeal Brief Request for Review.

REMARKS

Applicants submit the following remarks in view of the Final Office Action mailed May 9, 2007 and the Advisory Action mailed September 19, 2007. Claims 1-59 are pending. Claims 7-23 and 26-59 are withdrawn, leaving claims 1-6 and 24-25 for examination. Claims 1, 6, and 24-25 have been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 5,021,953 to Webber et al. ("Webber") and U.S. Patent No. 5,948,040 to DeLorme et al. ("DeLorme"); claim 2 has been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Webber, DeLorme, and U.S. Patent No. 7,092,892 to Sobalvarro et al. ("Sobalvarro"); and claims 3-4 have been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Webber, DeLorme, Sobalvarro, and U.S. Patent No. 5,848,396 to Gerace ("Gerace").

The Examiner has indicated that claim 5 would be allowable if rewritten in independent form. However, applicants respectfully submit that independent claim 1, from which claim 5 depends, is allowable. Accordingly, applicants have not elected to amend claim 5 to incorporate the features of claim 1.

Legal Standard for Obviousness

To properly reject claims under 35 U.S.C. § 103(a), "the examiner bears the initial burden of presenting a *prima facie* case of obviousness." *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d (BNA) 1955, 1956 (Fed. Cir. 1993). Because the Examiner has not identified references that disclose or suggest all the elements of the pending claims, the Examiner has not established a *prima facie* case of obviousness, and the rejections under 35 U.S.C. § 103(a) are improper. In particular, the references cited by the Examiner do not disclose or suggest (1) "automatically defining a range of dates, such that products whose availability dates fall within the defined range qualify as new products" where an availability date may be a date "on which a product is first available for purchase," or (2) "subsetting the inventory of products to those products having an availability date on which the product is first available for purchase falling within the defined date range" as recited by claims 1-6 and 24. Nor do the references disclose or suggest (1) "automatically defining a range of dates, such that instances of content

whose availability dates fall within the range qualify as new instances of content," or (2) "subsetting the inventory of content to those instances of content having an availability date on which an instance of content is first available on the web site falling within the defined date range" as recited by claim 25.

Overview of Applicants' Techniques

Applicants' techniques can be used for, among other benefits, increasing page views, such as at a merchant's web site. In some embodiments, applicants' techniques may promote to a particular user products or other items that are both (1) new to the user and (2) predicted to be of interest to the user. Applicants' techniques may determine whether an item is new to a user based on an availability date indicating when the item became available, such as when the item is first available for purchase. For example, applicants' techniques may determine that an item is new if its availability date is within 14 days of the present date, or is after a date on which the user last viewed product information.

Overview of Cited References

Webber is directed to a travel planning system in which a user enters dates on which to travel and cities to which to travel. Webber's system proposes a list of flights that satisfy these criteria, as well as satisfying criteria based on persistent user preferences, such as the user's favorite airline type.

DeLorme is also directed to a travel planning system. Travel dates may be entered directly by a user, or may be retrieved from an accounting system into which the dates were entered by a different user.

Independent Claims 1 and 24 were Improperly Rejected under 35 U.S.C. § 103(a)

Independent claims 1 and 24 include the features of "automatically defining a range of dates, such that products whose availability dates fall within the defined range qualify as new products" where an availability date may be a date "on which a product is first available for purchase." Neither Webber nor DeLorme teaches or suggests

automatically defining a range of dates, such that products that are first available for purchase within the defined date range qualify as new products. The range of dates identified by the Examiner as allegedly corresponding to the recited range of dates is a range of travel dates, or dates on which a traveler will travel. (See, e.g., Office Action, May 9, 2007, p. 3; Webber 4:9-16.) There is simply no necessary correspondence between the range of dates on which a traveler will travel and a range of dates such that products that are first available for purchase within the defined range qualify as new products. To the contrary, users in Webber and DeLorme are interested in flights that will fly on users' desired travel dates; these references contain no indication that users have any interest in the availability dates of the flights, that is, the dates on which the flights first became available for purchase. Further, the references do not teach or suggest that flights with availability dates that fall within a defined range of dates qualify as new flights as recited.

Claims 1 and 24 include the additional and independent feature of "subsetting the inventory of products to those products having an availability date on which the product is first available for purchase falling within the defined date range." Neither Webber nor DeLorme teaches or suggests subsetting an inventory of products to those products that have an availability date (i.e., a date on which the product is first available for purchase) that falls within the defined date range. To the contrary, Webber and DeLorme subset a list of all flights based on whether each flight is scheduled to occur on a date that the traveler wishes to travel, without any regard for when the flight may have first become available for purchase.

For at least the foregoing reasons, applicants submit that independent claims 1 and 24 were improperly rejected under 35 U.S.C. § 103(a) over the combination of Webber and DeLorme. Further, dependent claims 2-6 were improperly rejected under 35 U.S.C. § 103(a) over the combination of Webber and DeLorme for at least the same reasons.

Independent Claim 25 was Improperly Rejected under 35 U.S.C. § 103(a)

Independent claim 25 recites "automatically defining a range of dates, such that

instances of content whose availability dates fall within the range qualify as new instances of content." Webber and DeLorme do not disclose anything more relevant to the instances of content recited in this claim than to the products recited in claims 1 and 24. Accordingly, for at least the same reasons as discussed above, neither Webber nor DeLorme teaches or suggests automatically defining a range of dates, such that instances of content that are first available within the defined date range qualify as new instances of content as recited.

Claim 25 includes the additional and independent feature of "subsetting the inventory of content to those instances of content having an availability date on which an instance of content is first available on the web site falling within the defined date range." Webber and DeLorme do not disclose anything more relevant to the instances of content recited in this claim than to the products recited in claims 1 and 24. Accordingly, for at least the same reasons as discussed above, neither Webber nor DeLorme teaches or suggests subsetting an inventory of content to those instances of content that have an availability date (i.e., a date on which the instance of content is first available) that falls within the defined date range as recited.

For at least the foregoing reasons, applicants submit that independent claim 25 was improperly rejected under 35 U.S.C. § 103(a) over the combination of Webber and DeLorme.

Dependent Claim 2 was Improperly Rejected under 35 U.S.C. § 103(a)

For at least the reason that dependent claim 2 contains all the features and elements of independent claim 1, applicants submit that dependent claim 2 was improperly rejected over the combination of Webber, DeLorme, and Sobalvarro.

Dependent Claims 3-4 were Improperly Rejected under 35 U.S.C. § 103(a)

For at least the reason that dependent claims 3-4 each contain all the features and elements of independent claim 1, applicants submit that dependent claims 3-4 were improperly rejected over the combination of Webber, DeLorme, Sobalvarro, and Gerace.

Dependent Claim 6 was Improperly Rejected under 35 U.S.C. § 103(a)

For at least the reason that dependent claim 6 contains all the features and elements of independent claim 1, applicants submit that dependent claim 6 was improperly rejected over the combination of Webber and DeLorme.

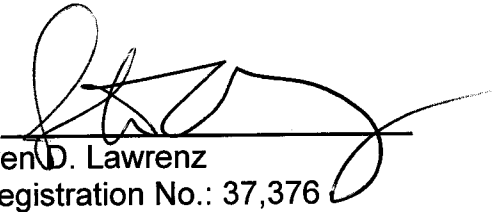
Conclusion

The Examiner has not identified references that disclose or suggest all the elements of the pending claims. In particular, the references cited by the Examiner do not disclose or suggest at least the features of (1) "automatically defining a range of dates, such that products whose availability dates fall within the defined range qualify as new products" where an availability date may be a date "on which a product is first available for purchase," or (2) "subsetting the inventory of products to those products having an availability date on which the product is first available for purchase falling within the defined date range" as recited by claims 1-6 and 24. Nor do the references disclose or suggest (1) "automatically defining a range of dates, such that instances of content whose availability dates fall within the range qualify as new instances of content," or (2) "subsetting the inventory of content to those instances of content having an availability date on which an instance of content is first available on the web site falling within the defined date range" as recited by claim 25.

As is apparent from the foregoing, the cited art is woefully deficient in rendering applicants' claims unpatentable. Therefore, the rejection of applicants' claims under 35 U.S.C. § 103 rises to the level of clear legal and/or factual error. Applicants therefore request that the rejections of the Final Office Action be withdrawn and a new, non-final Office Action or a Notice of Allowance be issued.

Dated: 11/9/07

Respectfully submitted,

By: 

Steven D. Lawrenz

Registration No.: 37,376

PERKINS COIE LLP

P.O. Box 1247

Seattle, Washington 98111-1247

(206) 359-8000

(206) 359-7198 (Fax)

Attorney for Applicant